

names shown on the bill of lading and the appropriate one of the documents described in paragraph (c)(1)(ii) of this section.

§ 758.5 General destination control requirements

(a) *Scope.* This section sets forth some actions the parties to a transaction authorized by a license issued by BXA are prohibited from taking. The purpose of these prohibitions is to prevent items licensed for export from being diverted while in transit or thereafter. It also sets forth the duties of the parties when the goods are unloaded in a country other than that of the ultimate consignee or intermediate consignee as stated on the export license.

(b) *Destination on bill of lading or air waybill—(1) Requirements to prevent diversions—(i) Statements on bill of lading or air waybill.* (A) A carrier (or any other person on behalf of any carrier) may not issue a bill of lading or air waybill providing for delivery of cargo at any foreign port located outside the country of the ultimate consignee, or the intermediate consignee, named on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part.

(B) *Optional ports on bill of lading or air waybill.* No carrier may issue a bill of lading or air waybill providing for delivery of cargo at optional ports to the ultimate consignee named on one of the appropriate documents described in § 758.4(c)(1) (i) and (ii) of this part where one of such optional ports is not in the country of ultimate destination named on the license or SED, or if there is no SED, the Shipper's Letter of Instructions, or if there is neither, another document containing instructions that the exporter conveys (either directly or through an agent) to the carrier, without prior written authorization from BXA. However, where the appropriate document described in § 758.4(c)(1) (i) and (ii) of this part provide for delivery of cargo to optional intermediate consignees located in ports in different countries, the carrier may issue a bill of lading or air waybill providing for delivery at such optional ports.

(ii) [Reserved]

(2) *Delivery of cargo.* No carrier may deliver cargo to any country other than the country of the ultimate consignee, or the intermediate consignee, named on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part at the request or option of the shipper, consignor, exporter, purchaser, or ultimate consignee, or their agents, or any other person having custody or control of the shipment, without prior written authorization from BXA to the carrier or its agent.

(c) *Duties when items are unloaded in a unauthorized country.* If the items are unloaded in a country other than that of the intermediate or ultimate consignee as stated on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part, the procedures described in this paragraph must be followed.

(1) *Reasons beyond carrier's control.* Nothing contained in the EAR shall be deemed to prohibit a carrier from unloading cargo at a port outside the country of intermediate or ultimate destination shown on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part, where for reasons beyond the control of the carrier (as set forth in the standard provisions of the carrier's bill of lading or air waybill, such as acts of God, perils of the sea, damage to the carrier, strikes, war, political disturbances, or insurrections), it is not feasible to deliver the cargo at the licensed port of destination.

(2) *Required actions for unscheduled unloading.* (i) If the item is unloaded in a country to which that item may be exported without a license issued by BXA, no one is required to notify BXA of the unloading. The exporter may dispose of the items in that country without approval of BXA. When making such a disposition you must still comply with any conditions or requirements of the License Exception or other provisions of the EAR that would authorize the export of the item being unloaded to the country in which you are disposing of it, and any regulations of other government agencies that apply to the transaction. This paragraph does not authorize anyone to take any action with knowledge that a violation of the Export Administration

Act, the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur or is intended to occur, or to deliver to a denied party or to take any other action prohibited by the EAR.

(ii) If a license issued by BXA would be required to export the item to the country in which it is unloaded:

(A) No person may take any steps to effect delivery or entry of the items into the commerce of the country where unloaded without prior approval of BXA;

(B) The carrier must take steps to assure that the items are placed in custody under bond or other guaranty not to enter the commerce of such country or any country other than the countries of the ultimate and intermediate consignees shown on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part, without prior approval of BXA;

(iii) The carrier, the carrier's agent located in the United States, and the exporter each have specific responsibilities to notify BXA regarding any unscheduled unloading. The specific responsibilities of each party are as follows:

(A) The carrier must, within 10 days after date of unloading, report the facts to the nearest American Consulate and to the agent of the carrier located in the United States. Within 10 days after receipt of such report, the agent must send a copy of the report to BXA. The report must include:

(1) A copy of the manifest of such diverted cargo;

(2) A statement of the place of unloading; and;

(3) The name and address of the person in whose custody the items were delivered.

(B) BXA will inform the exporter of the unloading. Within 10 days following receipt of this notice, the exporter must inform BXA of the proposed disposition of the items. The exporter may not dispose of the items without approval of BXA.

§ 758.6 Destination control statement

(a) *Requirement for destination control statement.* (1) The destination control statement shown in paragraph (b) of this section must be entered on all cop-

ies of the bill of lading, the air waybill and the commercial invoice covering any export from the United States if:

(i) The export is made under authority of a license, including the Special Comprehensive License;

(ii) The export is made under the authority of the following License Exceptions: LVS, GBS, CIV, CTP, TMP, or RPL; or

(iii) The export is made under the "No License Required" provisions of the EAR (as described in § 758.1(a) of this part) if the reason for control of the item as stated in the entry on the CCL is NS or NP.

(2) An exporter or the exporter's agent may enter a destination control statement on the shipping documents for exports for which no destination control statement is required.

(b) *Text of destination control statement.*

These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law prohibited.

(c) *Additional destination information.* In addition to the destination control statement, an exporter or exporter's agent may supply additional information on the shipping documents, including the country(ies) to which export or reexport is authorized.

(d) *Permissive reexports.* If reexport or diversion from the original transaction is contemplated and the change from the original transaction is consistent with the license, License Exception, the NLR provisions of the EAR or other authorization and with all other requirements of the EAR, the exporter may so advise its foreign importer without obtaining further authorization from BXA.

(e) *Responsibility for assuring that the destination control statement is used—(1) Exporters.* The exporter is responsible for assuring entry of the destination control statement on the commercial invoice, regardless of whether the exporter actually prepares this document. The exporter has this responsibility even if the invoice is prepared by an order party or the exporter acts through an agent.